

REMARKS

Applicant appreciates the thorough review of the present application as reflected in the Office Action mailed August 14, 2006 (hereinafter "Office Action"). Applicant has amended independent Claim 1 by incorporating recitations from dependent Claims 2 and 3 to clarify that the locating means is made of resiliently pliable material that can be configured to fit in an ear canal while allowing air to pass in and out of the ear canal. Claims 2 and 3 have been canceled without prejudice or disclaimer. Dependent Claim 4 has been amended to correct its dependency. Applicant respectfully submits that the cited reference fails to disclose or suggest, at least, all of the recitations of independent Claim 1 as amended. Accordingly, Applicant submits that all pending claims are in condition for allowance. Favorable reconsideration of all pending claims is respectfully requested for at least the reasons discussed hereafter.

Independent Claim 1 is Patentable

Independent Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by PCT Publication WO 00/53094 to Sarnoff Corporation (hereinafter "Sarnoff"). (Office Action, page 2). Independent Claim 1 has been amended to incorporate recitations from dependent Claims 2 and 3 and recites, in part:

...
physiological sensing means; and
locating means to locate the physiological sensing means inside an ear canal;
wherein the locating means is made of resiliently pliable material and can be configured to fit within the ear canal and wherein the locating means is **substantially U-shaped in transverse cross section such that when the sensing device is fitted into the ear canal air can pass in and out of the ear canal.** (Emphasis added).

Thus, according to independent Claim 1 the locating means for the sensing means has a substantially U-shaped cross section so as to allow air to pass in and out of the ear canal. Moreover, the pliable nature of the locating means together with the U-shaped configuration may result in an arrangement in which the device is essentially spring loaded as the arms of the locating means tend towards the relaxed, unbent position. Accordingly, when the device is located in the ear of the user, the physiological sensors may be pressed tightly or squeezed

against the sides of the ear canal, reducing the possibility of gaps or air-pockets occurring between the wall of the ear canal and the sensing device. This arrangement may allow the sensing means to give a more accurate reading such that the possibility of error due to the introduction of external light sources into these air-pockets may be reduced.

In sharp contrast to the recitations of independent Claim 1 as amended, Sarnoff describes a device in which the locating means is circular or O-shaped in transverse cross-section. The earmold 11 includes a cylindrical tube 12 that has a cylindrical passage therethrough. (Sarnoff, page 4, lines 17 - 19). The electronics assembly may be inserted inside the cylindrical passage 14 or mounted on a casing 15, which is inserted into the passage 14. A plurality of conical fins 16 project radially outward from the tube 12. The earmold 11 is held in the ear of the user both mechanically and by friction using the conical fins 16. (Sarnoff, page 4, lines 18 - 10; FIG. 1). As the earmold 11 moves into the ear, the fins 16 gently compress as they travel inwardly and hold the earmold firmly in the ear. (Sarnoff, page 5, lines 18 - 22). The O-shaped design of the tube 12 is essential to enclose the electronics assembly and to provide adequate gripping force by virtue of the radially extending fins. Applicant further submits that Sarnoff includes no disclosure of suggestion for one of skill in the art to modify the shape of the tube 12 to form a U-shape as such a configuration would be unworkable in the context of the teachings of Sarnoff. If the tube 12 were to have a U-shape, then such a configuration would result in loss of the gripping affect achieved by conical fins 16 and may also expose the electronics assembly.

For at least the foregoing reasons, Applicant respectfully submits that independent Claim 1 is patentable over Sarnoff and that Claims 4 - 15 are patentable at least per the patentability of independent Claim 1.

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CONCLUSION

In light of the above amendments and remarks, Applicant respectfully submits that the above-entitled application is now in condition for allowance. Favorable reconsideration of this application is respectfully requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (919) 854-1400.

Respectfully submitted,

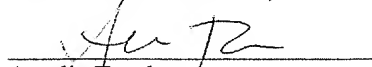


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